

3. Parameters of qualifications/restrictions regarding residency of petition circulators. (Nesiba, Bolin, Taylor)

The Supreme Court of the United States has released two decisions relating to limitations placed on petition circulators. Both cases arose from limitations placed on petition circulators under Colorado law.

In 1988, the Supreme Court was asked whether a Colorado law that prohibited the payment of petition circulators was constitutional in *Meyer v. Grant*, 486 U.S. 414 (1988). Agreeing with the Tenth Circuit Court of Appeals, the Supreme Court found that the limitation constituted a limitation on political expression as protected under the First Amendment. This limitation occurs in two ways, as provided in the Court's decision: "First, it limits the number of voices who will convey the appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion." In a later decision, the Eighth Circuit Court of Appeals found that a North Dakota statute prohibiting commission compensation for circulators (i.e., payment per signature received) is constitutional. See *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614 (2001). The court found that the ban on commission compensation would not in any way burden circulators' ability to collect signatures and advances the state's interest in preventing signature fraud.

The other major decision issued by the Supreme Court relating to petition circulators occurred in 1999, when the Court was asked whether three limitations placed on petition circulators were constitutional. In its decision for *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182 (1999), the Court determined that Colorado's requirements that petition circulators be registered voters, that they wear identification badges with their name, and that petition sponsors report the name and address of each circulator all violate the First Amendment. The Court specifically did not make any determination with regard to any residency requirement placed on petition circulators since that question was not raised before them for consideration. In a later decision issued by the Eighth Circuit Court of Appeals, and binding on South Dakota, the court declared that a residency requirement under North Dakota law is constitutional. See *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614 (2001). In its decision, the court found that the residency requirement allows the state to "protect the petition process from fraud and abuse by ensuring that circulators answer to the [Secretary of State's] subpoena power." While other circuit courts of appeals have found residency requirements unconstitutional, until the Supreme Court makes a decision on the issue, the Eighth Circuit's decision controls in South Dakota.